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ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

SUPERIOR AIR PARTS, INC.,

Debtor.

SUPERIOR AIR PARTS, INC.

Plaintiff,

V.

THIELERT AG

Defendant.

§ Case No. 08-36705-bjh11

§ Chapter 11

§ Adversary No. 09-03052-bjh

PLAINTIFF'S APPENDIX OF SUMMARY JUDGMENT EVIDENCE

Superior Air Parts, Inc. submits the following Appendix of Summary Judgment in support of its Motion for Summary Judgment avoiding the liens and security interests of Thielert AG.

Appendix A	Proof of Claim, No. 46, filed by Thielert AG
Appendix B	Debtor's Complaint to Avoid Liens and Security Interests of Thielert AG
Appendix C	Original Answer of Thielert AG

Respectfully submitted,

/s/ Stephen A. Roberts

Stephen A. Roberts (SBN 17019200)
Robert P. Franke (SBN 07371200)
Duane J. Brescia (SBN 24025265)
STRASBURGER & PRICE, LLP
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bob.franke@strasburger.com
duane.brescia@strasburger.com

**Bankruptcy Attorneys for Debtor Superior
Air Parts, Inc.**

CERTIFICATE OF SERVICE

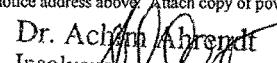
The undersigned certifies that true and correct copies of the foregoing pleading were forwarded to the parties listed below via facsimile and U.S. mail on the 2nd day of April 2009.

Chester B. Salomon
Becker, Glynn, Melamed & Muffly LLP
299 Park Avenue - 16th Floor
New York, NY 10171
Attorney for Thielert AG
(Fax: 212-888-0255)

/s/ Stephen A. Roberts

Stephen A. Roberts
Robert R. Franke
Duane Brescia
Attorneys for Debtor

FORM B10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT		Northern District of Texas, Dallas Division	PROOF OF CLAIM
Name of Debtor: Superior Air Parts, Inc.		Case Number: 08-36705-BJH-11	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): Thielert AG		<input type="checkbox"/> Check box to indicate that this claim amends a previously filed claim.	
Name and Address where notices should be sent: Dr. Achim Ahrendt, Insolvency Administrator Thielert AG Albert-Einstein-Ring 11 D-22761, Hamburg Germany		Court Claim Number: _____ <i>(if known)</i>	
Telephone Number:		Filed on: _____	
Name and address where payment should be sent (if different from above): Telephone Number:		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you are the debtor or trustee in this case.	
1. Amount of Claim as of Date Case Filed: <u>\$ 10,146,611.11</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority claim.	
2. Basis for Claim: <u>Loans</u> <i>(See instruction #2 on reverse side.)</i>		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	
3. Last four digits of any number by which creditor identifies debtor: <u>3041</u> 3a. Debtor may have scheduled account as: _____ <i>(See instruction #3a in reverse side.)</i>		<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4).	
4. Secured Claim (See instruction #4 on reverse side.) See attached statement. Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: Loans Value of Property: <u>\$ 11,500,000.00</u> Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, If any: <u>\$ _____</u> Basis for perfection: _____		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). Amount entitled to priority: <u>\$ _____</u>	
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction #7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
Date: <u>February 11, 2009</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. THIELERT AG  Dr. Achim Ahrendt Insolvenzverwalter By: Dr. Achim Ahrendt, Insolvency Administrator		FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§152 and 3571.

SUPERIOR AIR PARTS, INC., Debtor
Case No. 08-36705-BJH-11

STATEMENT ATTACHED TO
PROOF OF CLAIM OF THIELERT AG

On April 30, 2008 Thielert AG ("TAG") commenced insolvency proceedings in Hamburg, Germany. Dr. Achim Ahrendt was duly appointed as TAG's insolvency administrator, qualified and is presently acting in that capacity.

TAG's claim has three components:

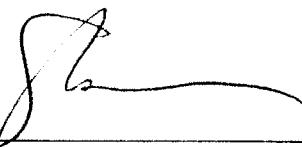
- a) Assignment to TAG dated February 14, 2006, of secured claim of PNC Bank, National Association under a Revolving Credit and Security Agreement, dated May 31, 2002, with related documents, with outstanding principal balance of \$8,000,000.00;
- b) Assignment of Note Purchase Agreement between Debtor and claimant's predecessor, RSTW Partners III, L.P., dated March 31, 1998, regarding senior subordinated note and related note documents, with an outstanding balance of \$1,999,999.99; and
- c) Interest in the amount of \$146,612.12.

The total claim is \$10,146,611.11.

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)																																														
PLAINTIFFS Superior Air Parts, Inc.	DEFENDANTS Thielert AG																																															
ATTORNEYS (Firm Name, Address, and Telephone No.) Stephen A. Roberts, Robert P. Franke, and Duane J. Brescia Strasburger & Price, LLP, 600 Congress Ave., Ste. 1600 Austin, TX 78701 (Tel 512.499.3600)	ATTORNEYS (If Known) Chester Salomon Stevens & Lee, 485 Madison Ave., 20th Fl. New York, New York 10022 (Tel. 212.537.0404)																																															
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee																																															
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Avoidance of Lien 11 USC §544																																																
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)																																																
<table border="0"> <tr> <td>FRBP 7001(1) – Recovery of Money/Property</td> <td>FRBP 7001(6) – Dischargeability (continued)</td> </tr> <tr> <td><input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property</td> <td><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support</td> </tr> <tr> <td><input type="checkbox"/> 12-Recovery of money/property - §547 preference</td> <td><input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury</td> </tr> <tr> <td><input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer</td> <td><input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan</td> </tr> <tr> <td><input type="checkbox"/> 14-Recovery of money/property - other</td> <td><input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)</td> </tr> <tr> <td>FRBP 7001(2) – Validity, Priority or Extent of Lien</td> <td><input type="checkbox"/> 65-Dischargeability - 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B104 (FORM 104) (08/07), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Superior Air Parts, Inc.	BANKRUPTCY CASE NO. 08-36705	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas Division	NAME OF JUDGE Honorable Barbara J. Houser
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 2/17/2009	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Stephen A. Roberts	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

STEPHEN A. ROBERTS
STATE BAR NO. 01701920
ROBERT P. FRANKE
STATE BAR NO. 07371200
DUANE J. BRESCIA
STATE BAR NO. 24025265
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ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§ Case No. 08-36705
SUPERIOR AIR PARTS, INC.,	§ Chapter 11
Debtor.	§
<hr/>	
SUPERIOR AIR PARTS, INC.	§ ADVERSARY NO. _____
V.	§
THIELERT AG	§

**DEBTOR'S COMPLAINT TO AVOID LIENS
AND SECURITY INTERESTS OF THIELERT AG**

TO: THE HONORABLE BARBARA J. HOUSER,
UNITED STATES BANKRUPTCY JUDGE:

Superior Air Parts, Inc. ("Debtor" or "Superior") files this Complaint to Avoid Liens

and Security Interests of Thielert AG and would respectfully show the Court as follows:

**I.
PARTIES**

1. Plaintiff Superior Air Parts, Inc. is the Debtor-in-Possession in this case.
2. Defendant Thielert AG is the owner of all of the outstanding shares of Superior and is a secured creditor of Superior. Thielert AG has filed a proof of claim in

this case and may be served with process by service upon its counsel, Chester B. Salomon, Stevens & Lee, 485 Madison Avenue, 20th Floor, New York, NY 10022.

**II.
JURISDICTION**

3. This is an action to avoid an unperfected lien on property of the estate pursuant to 11 U.S.C. § 544. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. Venue is proper pursuant to 28 U.S.C. § 1408.

**III.
BACKGROUND**

5. Superior is a Texas corporation with its offices and operating facilities located in Coppell, Dallas County, Texas. On December 31, 2008, Superior filed for protection under Chapter 11 of the United States Bankruptcy Code. Superior sells Superior-brand parts for engines manufactured by Teledyne Continental Motors, Inc. and the Lycoming Engines division of Avco Corporation, a subsidiary of Textron, Inc. Superior is also an OEM for the 180-horsepower Vantage Engine and owner-built XM-360 engines for various aircraft companies. Superior is a distributor of over 2,000 general parts purchased from other manufacturers, which complement its own product line.

6. On or about February 14, 2006, Thielert AG acquired all of the outstanding shares of Superior and entered into an Assignment Agreement effective that date with PNC Bank, National Association ("PNC Bank"), RSTW Partners III L.P., Rice Mezzanine Lenders, L.P. and SP Holdings pursuant to which PNC Bank assigned to Thielert AG its right, title and interest in its Revolving Credit and Security Agreement with Superior,

dated as of May 31, 2002, and the amendments and agreement relating thereto. At the time of the assignment, Superior's indebtedness to PNC Bank was secured by substantially all the assets of Superior, which consist solely of personal property. Upon information and belief, RSTW Partners III, L.P. contemporaneously assigned its subordinated notes to Thielert AG.

7. Thielert filed a proof of claim in this case, asserting a secured claim in the amount of \$10,146,611.11.

8. Thielert did not attach any security agreement or evidence of perfection to its proof of claim.

9. There is no active Uniform Commercial Code Financing Statement on file with the Texas Secretary of State, perfecting the lien of Thielert AG.

10. Thielert AG's liens and security interests on Superior's assets are unperfected.

IV.

CAUSE OF ACTION – AVOIDANCE OF LIENS AND SECURITY INTERESTS

11. The liens and security interests of Thielert AG on the property of Superior are avoidable pursuant to 11 U.S.C. § 544.

12. A debtor operating as a Debtor-in-possession has the right to seek to avoid pre-petition liens pursuant to 11 U.S.C. §544. *Gandy v. Gandy*, 299 F.3d 489, 497 (5th Cir. 2002). The "strong arm powers" statute, Section 544, provides, in relevant part:

- (a) The Trustee shall have, as of the commencement of the case, and without regard to any knowledge of the Trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the Debtor or any obligation incurred by the Debtor that is voidable by

- (i) a creditor that extends credit to the Debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not a creditor exists; or
- (ii) a creditor that extends credit to the Debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the Debtor that is returned unsatisfied at such time, whether or not such a creditor exists;

11 U.S.C § 544.

13. The extent of the Trustee's rights as a judicial lien creditor, or a creditor with execution unsatisfied, is measured by the substantive law of the jurisdiction governing the property in question. See, e.g., *In re Bridge*, 18 F.3d 195 (3rd Cir. 1994); *In re Kitchin Equip. Co. of Va., Inc.*, 960 F.2d 1242 (4th Cir. 1992); *In re Kors, Inc.*, 819 F.2d 19 (2nd Cir. 1987).

14. Under Section 544(a)(i), the analysis is whether the holder of the security interest in the Debtor's property has taken the steps necessary under applicable law to put other potential creditors on notice of its interest by proper perfection. COLLIER ON BANKRUPTCY, Section 544.02 (Matthew Bender 2008). Section 9-317 (a)(ii) of the Uniform Commercial Codes provides that such a security interest is subordinate to the right of a "lien creditor." *Id.* (In Texas, this provision is found in Section 9.317 of the TEXAS BUSINESS AND COMMERCE CODE.) The bankruptcy trustee may also use the "strong arm clause" to avoid unperfected security interests in personal property subject to Article 9 of the UCC, *Sommers vs. IBM*, 640 F.2d 686 (5th Cir. 1981), as well as to avoid unperfected liens and security interests in real property or personal property to the extent that a judgment lien creditor may do so under applicable non-bankruptcy law.

See *In re Wheaton Oaks Office Partners Limited Partnership*, 27 F.3d 1234 (7th Cir. 1994).

15. Subsection (a)(ii) provides that the Trustee has the right of a creditor with a lien returned unsatisfied. The effect of the statute is to give the Trustee the equitable rights of a creditor who has exhausted its legal remedies. This opens the way for appropriate equitable relief. Collier on Bankruptcy Section 544.86

16. Thielert AG was required to file proof of its security interest, including evidence of perfection, if any, along with its Proof of Claim. BANKRUPTCY RULE 3001. Thielert AG has failed to attach to its proof of claim any evidence of a security agreement or perfection. Thus, Thielert AG's lien is subject to avoidance pursuant to 11 U.S.C. § 544.

WHEREFORE, Superior requests that the Court enter judgment avoiding the liens and security interests of Thielert AG on the assets of Superior. Superior requests such other relief as is just.

Respectfully submitted,

/s/ Stephen A. Roberts
Stephen A. Roberts (SBN 17019200)
Robert P. Franke (SBN 07371200)
Duane J. Brescia (SBN 24025265)
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Bankruptcy Attorneys for Debtor Superior Air Parts, Inc.

BECKER, GLYNN, MELAMED & MUFFLY LLP
By: Chester B Salomon (CS-2319)
299 Park Avenue
New York, New York 10171
(212) 888-3033
Attorneys for Defendant Thielert AG

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

SUPERIOR AIR PARTS, INC.

Debtor.

ORIGINAL *SB* FILED

MAR 26 2009

TAWANA C. MARSHALL, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

SUPERIOR AIR PARTS, INC.

Plaintiff,

-against-

THIELERT AG

Defendant.

Case No. 08-36705

Chapter 11

Index No. 09-3052 (BJH)

**ANSWER OF THIELERT A.G. TO ADVERSARY PROCEEDING
COMPLAINT TO AVOID LIENS AND SECURITY INTERESTS**

BECKER, GLYNN, MELAMED & MUFFLY LLP
Attorneys for Defendant Thielert AG
299 PARK AVENUE
NEW YORK, NEW YORK 10171
(212) 888-3033

APPENDIX C

Defendant Thielert AG ("Thielert"), by its insolvency administrator, Dr. Achim Ahrendt and their attorneys Becker, Glynn, Melamed & Muffly LLP, respectfully submits Thielert's Answer to the Complaint as follows:

1. Admits the allegation set forth in paragraph 1 of the Complaint.
2. Admits each and every allegation set forth in paragraph 2 of the Complaint and states Chester B. Salomon is of counsel to Becker, Glynn, Melamed & Muffly LLP.
3. Denies having knowledge or information sufficient to form a belief as to the truth of the allegation as set forth in the first sentence of paragraph 3 of the complaint and admits the allegations set forth in the last two sentences of paragraph 3 of the Complaint.
4. Admits paragraph 4 of the Complaint.

I.

BACKGROUND

5. Admits paragraph 5 of the Complaint.
6. Admits paragraph 6 of the Complaint.
7. Admits paragraph 7 of the Complaint.
8. Admits paragraph 8 of the Complaint.
9. Admits paragraph 9 of the Complaint.
10. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the Complaint.

11. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Complaint.

12. Denies the allegations in paragraph 12 of the Complaint as they call for legal conclusions.

13. Denies the allegations in paragraph 13 of the Complaint as they call for legal conclusions.

14. Denies the allegations in paragraph 14 of the Complaint as they call for legal conclusions.

15. Denies the allegations in paragraph 15 of the Complaint as they call for legal conclusions.

16. Denies the allegations in paragraph 16 of the Complaint as they call for legal conclusions.

AFFIRMATIVE DEFENSE

17. The Complaint fails to state a claim upon which relief may be granted.

WHEREFORE, Thielert demands judgment dismissing the complaint with prejudice, and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 17, 2009

BECKER, GLYNN, MELAMED &
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UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUPERIOR AIR PARTS, INC.

Debtor.

Case No. 08-36705

Chapter 11

SUPERIOR AIR PARTS, INC.

Plaintiff,

-against-

THIELERT AG

Defendant.

Index No. 09-3052 (BJH)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer of Thielert A.G. to Adversary Proceeding Complaint to Avoid Liens and Security Interests, was served on the parties on the attached Service List via U.S. Mail and electronic mail, on March 18, 2009.

Dated: New York, New York
March 18, 2009

BECKER, GLYNN, MELAMED & MUFFLY LLP
Attorneys for Defendant Thielert AG

By: /s/ Chester B. Salomon
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Service List

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